

1 DENNIS J. HERRERA, State Bar #139669
2 City Attorney
2 JOANNE HOEPER, State Bar #114961
3 Chief Trial Attorney
3 PETER J. KEITH, State Bar #206482
4 Deputy City Attorney
4 Fox Plaza
5 1390 Market Street, Sixth Floor
5 San Francisco, California 94102-5408
6 Telephone: (415) 554-3908
6 Facsimile: (415) 554-3837
7 E-Mail: peter.keith@sfgov.org

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APR 4 2005

RICHARD W. WICKING
PLAINE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 Attorneys for Defendant
8 CITY AND COUNTY OF SAN FRANCISCO

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 JOHNНИE DAVIS, Case No. C 05 1341 BZ
13 Plaintiff,
14 vs.
15 CITY AND COUNTY OF SAN
16 FRANCISCO; CHIEF OF POLICE
17 PRENTICE E. SANDERS; ACTING
18 AND ASSISTANT CHIEF OF POLICE
ALEX FAGAN, SR.; and DOES 1-60,
19 Defendants.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Case No. C 05 1341 BZ
**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(b)
(FEDERAL QUESTION)**

21 TO: THE CLERK OF THE ABOVE-ENTITLED COURT:

22 PLEASE TAKE NOTICE that defendant City and County of San Francisco (the "City")
23 hereby removes to this Court the state court action described below.

24 1. On or about November 17, 2003, plaintiff Johnnie Davis filed a complaint in the
25 Superior Court of the State of California in and for the County of San Francisco, entitled "Johnnie
26 Davis, Plaintiff, vs. City And County Of San Francisco, Chief Of Police Prentice E. Sanders, Acting
27 And Assistant Chief Of Police Alex Fagan, Sr., and Does 1-60, Defendants," San Francisco Superior
28

1 Court Case No. 03-426-445. A copy of the complaint filed on November 17, 2003, by plaintiff in
2 that action is attached hereto as Exhibit A.

3 2. The City is informed and believes that the first date upon which any defendant named
4 in this action received a copy of the complaint was March 8, 2005, when plaintiff served the City and
5 County of San Francisco with a copy of said complaint. Pursuant to 28 U.S.C. § 1446(a), a copy of
6 the Summons and Complaint, which constitutes all of the process, pleadings and orders that have
7 been filed or received by the defendants in this case, is attached hereto as Exhibit A.

8 3. The complaint purports to state a cause of action arising under 42 U.S.C. § 1983 in
9 that it alleges violations of plaintiff's federal civil and constitutional rights.

10 4. This action is therefore a civil action over which this Court has original jurisdiction
11 under 28 U.S.C. § 1331, and is one which may be removed to this Court by defendant pursuant to the
12 provisions of 28 U.S.C. § 1441(b), in that it arises under the federal civil rights laws.

13 5. Other than the City and County of San Francisco, Plaintiff named Alex Fagan, Sr., and
14 Prentice E. Sanders CityTow as defendants. Counsel for both of these individuals informed me that
15 neither of them has been served.

16 || Dated: March 31, 2005

DENNIS J. HERRERA
City Attorney
JOANNE HOEPER
Chief Trial Deputy
PETER J. KEITH
Deputy City Attorney

By: Peter J. Keith
PETER J. KEITH

Atorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

1
2 **INDEX TO EXHIBITS**
3
4

5 **Exhibit Description**
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7

8 A Summons and Complaint Served on Defendant City and County of San Francisco
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PROOF OF SERVICE

1 I, Heidi Bennett, declare as follows:

2 I am a citizen of the United States, over the age of eighteen years and not a party to the within
 3 entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building,
 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

4 On April 4, 2005, I served the attached:

5 **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b)**
 6 **(FEDERAL QUESTION)**

7 on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed
 8 as follows:

9 Russell A. Robinson
 Law Office of Russell A. Robinson
 345 Grove Street, First Floor
 10 San Francisco, CA 94102

11 Telephone: 415/ 255-0462
 Facsimile: 415/ 255-0464

12 and served the named document in the manner indicated below:

13 **BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business practices,
 14 to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San
 15 Francisco, Fox Plaza Building, 1390 Market Street, City and County of San Francisco, California, 94102, for
 16 collection and mailing with the United States Postal Service, and in the ordinary course of business,
 correspondence placed for collection on a particular day is deposited with the United States Postal Service that
 same day.

17 **BY PERSONAL SERVICE:** I caused true and correct copies of the above documents to be placed and
 18 sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered by hand on the
 office(s) of the addressee(s).

19 **BY EXPRESS SERVICES OVERNITE:** I caused true and correct copies of the above documents to
 20 be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered
 to EXPRESS SERVICES OVERNITE for overnight courier service to the office(s) of the addressee(s).

21 **BY FACSIMILE:** I caused a copy(ies) of such document(s) to be transmitted via facsimile machine. The
 22 fax number of the machine from which the document was transmitted was 415/ 554-3837. The fax number(s) of
 23 the machine(s) to which the document(s) were transmitted are listed above. The fax transmission was reported as
 complete and without error. I caused the transmitting facsimile machine to print a transmission record of the
 transmission, a copy of which is attached to this declaration.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
 25 is true and correct. Executed April 4, 2005, at San Francisco, California.

26 
 27 Heidi Bennett

SUMMONS

(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (Aviso al Acusado)

CITY AND COUNTY OF SAN FRANCISCO; CHIEF OF POLICE PRENTICE E. SANDERS; ACTING AND ASSISTANT CHIEF OF POLICE ALEX FAGAN, SR.; and, DOES 1-60.

RECEIVEDMAYORS OFFICE
(FOR COURT USE ONLY)
(SOLO PARA USO DE LA CORTE)

05 MAR - 8 AM 8:32

YOU ARE BEING SUED BY PLAINTIFF:

(A Ud. le está demandando)

JOHNNIE DAVIS

You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: (El nombre y dirección de la corte es)

Superior Court of the State of California

400 McAllister Street

400 McAllister Street

San Francisco CA 94102

County of San Francisco -- Unlim. Civil Juris

CASE NUMBER (Número del Caso)

CCP - 03 - 426445

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

Russell A. Robinson, 163937 415.255.0462 415.255.0466

Law Office of Russell A. Robinson

345 Grove Street

First Floor

San Francisco CA 94102

DATE: NOV 17 2003
(Fecha)

Gordon Park-Li

Clerk, by _____
(Actuario)

PARAM NATT

f. W. /
Deputy
(Delegado)

(Seal)



NOTICE TO THE PERSON SERVED: You are served

1. _____ as an individual defendant.

2. _____ as the person sued under the fictitious name of (specify):

3. on behalf of (specify): City and County of San Francisco

under:

 CCP 416.10 (corporation) CCP 416.20 (defunct corporation) CCP 416.40 (association or partnership) other4. by personal delivery on (date): 3-8-05
 CCP 416.60 (minor)
 CCP 416.70 (conservatee)
 CCP 416.90 (individual)

(See reverse for Proof of Service)

SUMMONS

Legal
Solutions
LA Plus

CCP 416.20

ENDORSED
(FILED)
SAN FRANCISCO COUNTY
SUPERIOR COURT

1 Russell A. Robinson (163937)
 Law Office of Russell A. Robinson
 2 345 Grove Street, Level One
 San Francisco CA 94102
 Telephone: (415) 255-0462
 Facsimile: (415) 255-0464
 4 Attorney for Plaintiff
 5 JOHNNIE DAVIS

106 NOV 17 PM 2:42

GORDON PARK-LI, CLERK

6 CASE MANAGEMENT CONFERENCE SET BY — PARAMOUNT

DEPUTY CLERK

7 PLATI APR 16 2014 9AM

8 DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

10	JOHNNIE DAVIS,	) No.	11 CCC - 03 - 426442
11	Plaintiff,	)	12 COMPLAINT FOR DAMAGES AND
12		)	13 FOR INJUNCTIVE RELIEF; DEMAND
13		)	14 FOR JURY TRIAL
14	CITY AND COUNTY OF SAN FRANCISCO; )	)	15 [Civil Rights] BY FAX
15	CHIEF OF POLICE PRENTICE H. SANDERS; )	)	16
16	ACTING AND ASSISTANT CHIEF OF )	)	17
17	POLICE ALEX FAGAN, SR; and, DOES 1-60; )	)	18
18	Defendants.	)	19
19		)	20

JURISDICTION AND VENUE

21 1. This action arises from acts by Defendants, who violated the several laws and
 22 statutes of the United States of America, including the Constitution of the United States and its
 23 various amendments, and is brought under 42 USC §1983.

24 2. Venue in the Superior Court of the State of California, City & County of San
 25 Francisco, is proper; acts complained of occurred in the City and County of San Francisco, State
 26 of California. At least one defendant "resides" in the City and County of San Francisco.

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PARTIES

2 3. Plaintiff JOHNNIE DAVIS has been at all relevant times an adult, male resident of
3 the State of California, in the City and County of San Francisco.

4. Plaintiff is informed and believes that Defendant CITY AND COUNTY OF SAN
4 FRANCISCO ("C&CSF") is, and was, a municipal corporation duly organized and existing under
5 the laws of the State of California. Plaintiff is informed that, in C&CSF (1) the San Francisco
6 Police Department ("SFPD") is that municipal agency charged with investigating and responding
7 to criminal activity; (2) Defendant PRENTICE E. SANDERS was and may be the duly appointed
8 CHIEF OF POLICE in C&CSF at most relevant times; and, (3) and that Defendant ALEX
9 FAGAN, SR., was the temporary or provisional Chief who succeeded, at times, Sanders, as Chief
10 of Police in C&CSF, and that Fagan himself was at relevant times the highest ranking "Deputy
11 Chief of Police" in C&CSF. Plaintiff is further informed and believes that it is and was the Chiefs'
12 responsibility, *inter alia*, to manage, control, and set official policy for the SFPD. Sanders and
13 Fagan are sued in their individual and official capacities.
14

15 5. Plaintiff is informed and believes that at all relevant times Defendants DOES 1-60,
16 sued in their official and individual capacities, were, *inter alia*, at all relevant times employed by
17 Defendant C&CSF. Plaintiff is further informed and believes that the above-named individual
18 defendants received training and education in the proper role for police work in the United States,
19 and they were aware at all relevant times of restrictions imposed by the constitutions of the United
20 States of America and of the State of California. These defendants shall be referred to collectively
21 as the "Attackers."

22 6. Plaintiff is informed and believes that, at all relevant times, Defendants DOES 1-
23 60, *inter alia*, have been police supervisors with the SFPD, and are sued here in individual and
24 official capacities.

1 7. Defendants DOES 1 through 60 are fictitiously named persons/entities, whose true
2 identities and roles in the events which are the subject matter of this complaint, are presently
3 unknown to Plaintiff. Plaintiff will amend this complaint to identify fictitiously named Defendants
4 and to set forth facts relating to each when same become known to Plaintiff. Plaintiff is informed
5 and believes and thereon alleges that each DOE Defendant is legally responsible for events alleged
6 herein which caused injury and damage to Plaintiff.

7 8. Unless otherwise alleged, Plaintiff is informed and believes and thereon alleges that
8 at all relevant times mentioned herein Defendants were the agents and/or employees of their co-
9 defendants, and in doing the things alleged in this complaint were acting within the course and
10 scope of that agency and/or employment.

11 9. In doing the acts or omissions alleged, the defendants and each of them were
12 acting in the course and scope of their employment with the C&CSF.

13 10. In doing the acts or omissions alleged, the defendants acted under color of
14 authority and/or under color of law.

STATEMENT OF FACTS

16 11. On about November 15, 2002, Plaintiff was attacked by the Attackers in San
17 Francisco, ostensibly as a criminal suspect. In the course of (a) tackling Plaintiff from behind
18 while Plaintiff stumbled across a San Francisco street on crutches and (b) making that arrest,
19 several of the Attackers beat Plaintiff, threatened Plaintiff, and caused Plaintiff serious injuries;
20 others stood by and refused/failed to stop the beating. When Plaintiff protested the methods used
21 by his assailants on November 15, 2002, the beating became worse.

22 12. As a result of the beating, Plaintiff is informed and believes that he suffered, *inter*
23 *alia*, severe lacerations and contusions, bleeding, a severe re-injury to his leg/ankle, a new leg
24 injury, and other injuries as a result of the beating.

1 13. As a foreseeable result of his injuries suffered, Plaintiff is informed and believes
 2 that in connection with the medical care required after November 15, 2002, and received at SF
 3 General Hospital, Plaintiff incurred significant medical bills.

4 14. Plaintiff is informed and believes that at all relevant times, there existed in the
 5 SFPD an atmosphere or environment which tolerated police misconduct. Plaintiff is informed and
 6 believes that this atmosphere or environment which tolerated police misconduct was officially
 7 ratified, condoned, or created by customs, practices, and policies that existed at the SFPD.
 8 Plaintiff is further informed and believes that this atmosphere or environment which tolerated
 9 police misconduct, actually led to the encouragement of misconduct and was the moving force
 10 behind and cause of many civil rights violations by the SFPD and its employees under Sanders,
 11 Fagan, and their predecessors.

12 15. Plaintiff is informed and believes that Defendants Attackers individually or acting
 13 in concert have engaged in repeated acts of harassment, police misconduct, and constitutionally-
 14 destructive conduct against persons residing in or traveling to or visiting the City and County of
 15 San Francisco. These repeated acts, part of a pattern and practice, did in fact lead to the
 16 constitutional deprivations complained of herein.

17 16. Plaintiff is further informed and believes that said civil rights violations and/or
 18 other acts of misconduct included assaults, beatings, false arrests, false warrants, unreasonable
 19 searches and seizures, intimidation, kidnapings, falsifying reports, planting of evidence, denial of
 20 due process and equal protection of laws, racial discrimination, conspiracy to violate civil rights,
 21 and/or other misconduct.

22 17. Plaintiff, an African-American, is informed and believes said misconduct included
 23 but was not limited to subjecting African-American males in particular to disparate treatment
 24 because of their race. As a result, Plaintiff and others were subjected to unequal treatment, civil
 25

rights violations, and other misconduct by Attackers and others employed by Defendant C&CSF.

18. Plaintiff is further informed and believes that Defendants Sanders, Fagan Sr., and other high-ranking members of the SFPD repeatedly failed to take remedial or corrective action despite the pervasive and ongoing malfeasance within the SFPD.

19. Plaintiff is further informed and believes that as a matter of official policy – rooted in an entrenched posture of deliberate indifference to the constitutional rights of African-American males within the City and County of San Francisco and nearby environs – defendant C&CSF has long allowed Plaintiff and others similarly situated to be abused by officers of the SFPD, including but not limited to those defendants named as Attackers herein.

DAMAGES

20. As a result of the conduct by Defendants, and each of them, Plaintiff suffered special damages, and general damages including but not limited to serious injuries, great fear and mental distress, according to proof.

21. The conduct by the individually named defendants was willful, wanton, intentional, and/or oppressive; therefore, an award of punitive or exemplary damages as to the individual defendants, only, should be made in an amount to be proven.

22. The conduct by Defendants forced Plaintiff to incur legal expenses, costs and fees, and to retain private counsel. Plaintiff is therefore entitled to reasonable costs and attorneys' fees under 42 USC §1988 and California Civil Code §§ 51.7 & 52.

CONSPIRACY ALLEGATIONS

23. Plaintiff is informed and believes that the acts by the individual defendants, as described above, were part of an agreement or a concerted course of conduct, with the goal being to harm or injure the plaintiffs. Plaintiff is informed and believes that many of the Attackers refused to report or to stop the unlawful force exerted by their co-defendants on Plaintiff, because

1 of their friendship and because some of the Attackers prevailed on their co-defendants not to
2 report the use of force and not to stop the use of force.

3 24. Plaintiff was injured as a direct result of the efforts by the individual defendants
4 who acted in furtherance of the conspiracy or agreement to damage and injure Plaintiff.

FIRST CAUSE OF ACTION

42 USC §1983

7 25. Plaintiff incorporates by reference all of the preceding paragraphs as though set
8 forth fully herein.

9 26. Plaintiff is informed that Defendants [CITY AND COUNTY OF SAN
10 FRANCISCO; CHIEF OF POLICE PRENTICE E. SANDERS; ACTING AND ASSISTANT
11 CHIEF OF POLICE ALEX FAGAN, SR.; and, DOES 1-60] and each of them, ratified and
12 condoned the conduct of the individual defendants and each of them, and that the supervisory
13 defendants set the official policies, customs, and practices for the SFPD that were the moving
14 force behind Plaintiff's constitutional injuries. The deprivations by said Defendants, and each of
15 them, violated Plaintiff's rights under the Bill of Rights to the United States Constitution,
16 including but not limited to the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth, Amendments.

17 27. Plaintiff is informed and believes that the tortious conduct described herein was
18 known at the time by these defendants to violate of Plaintiff' constitutional rights.

19 WHEREFORE Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION

42 USC §1983

22 28 Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

23 29. Plaintiff is informed that Defendants Sanders, Fagan Sr., Does 1-60, and each of
24 them, ratified and condoned the conduct of their co-defendants, and that the supervisory

1 defendants set the official policies, customs, and practices for the SFPD that were the moving
2 force behind Plaintiff's constitutional injuries. The deprivations by Defendants, and each of them,
3 violated Plaintiff's rights under the Bill of Rights to the United States Constitution, including but
4 not limited to the First, Fourth, Fifth, Eighth, and Fourteenth, Amendments.

5 30. Plaintiff is informed and believes that the tortious conduct described herein was
6 known at the time by these defendants to violate of Plaintiff's constitutional rights.

7 WHEREFORE, Plaintiff prays for relief as set forth below.

THIRD CAUSE OF ACTION

INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

31. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

11 32. The acts by Defendants Attackers, Does 1-60 throughout, and each of them, as
12 described above, were so outrageous that these exceeded the bounds usually tolerated in a
13 civilized society.

14 33. These Defendants intended, or recklessly disregarded the likelihood, that their acts
15 would cause Plaintiff to suffer emotional distress, including, but not limited to feelings of
16 depression and concern and worry about their own personal safety, well-being, and their rights.

17 34. As a direct result of the acts of Defendants, and each of them, Plaintiff suffered
18 and continues to suffer severe and/or extreme emotional distress, including but not limited to
19 sleeplessness, humiliation, shame, worry, embarrassment, feelings of depression, and grief all to
20 his damage, according to proof at trial.

21 35. The conduct of said individual Defendants, and each of them, described above was
22 oppressive, fraudulent, and malicious, entitling Plaintiff to an award of punitive damages in an
23 amount appropriate to punish and make an example of Defendants and each of them.

WHEREFORE, Plaintiff prays for relief and judgment as set forth below.

**FOURTH CAUSE OF ACTION
VIOLATIONS OF STATE STATUTES**

36 Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

37. As described above, Defendants DOES 1-60, and each of them, intentionally and unlawfully exercised force or the express or implied threat of force to restrain, detain, injure, or confine Plaintiff.

38. The conduct of said defendants violated the Constitution of the State of California, including but not limited to the rights to equal protection and due process of laws. In addition, the conduct of the said defendants and each of them violated California Civil Code sections 51.7 and 52.

WHEREFORE Plaintiff prays for relief and judgment as set forth below.

FIFTH CAUSE OF ACTION

ASSAULT AND BATTERY

39 Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

15 40. Defendants DOES 1-60, and each of them, possessed the ability to commit a
16 violent injury on Plaintiff's person.

17 41. As alleged above, said Defendants, and each of them, unlawfully attempted to
18 commit a violent injury and did commit violent injuries on Plaintiff's person, thereby assaulting
19 and battering Plaintiff.

20 42. As alleged above, said Defendants, and each of them, willfully and unlawfully did
21 use force and/or violence on Plaintiff's person, thereby battering Plaintiff.

22 43. As a direct, legal, and proximate result of the acts by said Defendants, and each of
23 them, unlawfully Plaintiff suffered and will continue to suffer foreseeable, substantial losses and
24 damages.

44. As a direct, legal, and proximate result of the above-mentioned conduct, Plaintiff was and is damaged in an amount to be proven at trial.

45. The conduct of said Defendants, and each of them, described above was oppressive, fraudulent, and malicious, entitling Plaintiff to an award of punitive damages in an amount appropriate to punish and make an example of Defendants and each of them.

WHEREFORE, Plaintiff pray for relief as follows:

PRAYER

- a. Compensatory damages according to proof;
- b. General damages according to proof;
- c. Punitive and exemplary damages, as to the individually-named defendants, only;
- d. For costs of suit and for reasonable attorneys' fees under, *inter alia*, 42 USC and California Civil Code §§ 51.7 & 52;
- e. For pre-judgment and post-judgment interest;
- f. For an order requiring Defendants, all persons acting on behalf of Defendants, and them, to do the following:

1. To stop all harassing acts aimed at Plaintiff, Plaintiff's family, and others who may be affiliated with Plaintiff;
2. To restrain each of the individually-named defendants regarding the proper use of authority and force;
3. To cease using the real or implied threats of violence in police work; and,
4. To terminate all of the individually-named defendants with a history of committing similar acts of retaliatory police work.

1 g. Such other and further relief as the Court deems just and proper.

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3 Date: 14 Nov 2003


Law Office of Russell A. Robinson
Attorneys for Plaintiff JOHNNIE DAVIS

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DEMAND FOR JURY TRIAL

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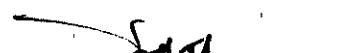
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12 Date: 14 Nov 2003


Law Office of Russell A. Robinson
Attorneys for Plaintiff JOHNNIE DAVIS

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